

EDMONDS CITY COUNCIL APPROVED MINUTES

January 12, 2016

The Edmonds City Council meeting was called to order at 7:00 p.m. by Mayor Earling in the Council Chambers, 250 5th Avenue North, Edmonds. The meeting was opened with the flag salute.

ELECTED OFFICIALS PRESENT

Dave Earling, Mayor
Kristiana Johnson, Council President
Michael Nelson, Councilmember
Adrienne Fraley-Monillas, Councilmember
Diane Buckshnis, Councilmember
Dave Teitzel, Councilmember
Thomas Mesaros, Councilmember
Neil Tibbott, Councilmember

STAFF PRESENT

Jim Lawless, Assistant Police Chief
N. Haughian, Police Officer
Phil Williams, Public Works Director
Patrick Doherty, Econ. Dev & Comm. Serv. Dir.
Shane Hope, Development Services Director
Scott James, Finance Director
Rob English, City Engineer
Mary Ann Hardie, Human Resources Manager
Jeff Taraday, City Attorney
Linda Hynd, Deputy City Clerk
Jerrie Bevington, Camera Operator
Jeannie Dines, Recorder

1. ROLL CALL

Deputy City Clerk Linda Hynd called the roll. All elected officials were present.

2. APPROVAL OF AGENDA

COUNCILMEMBER BUCKSHNIS MOVED, SECONDED BY COUNCILMEMBER TEITZEL, TO APPROVE THE AGENDA IN CONTENT AND ORDER. MOTION CARRIED UNANIMOUSLY.

3. APPROVAL OF CONSENT AGENDA ITEMS

COUNCILMEMBER BUCKSHNIS MOVED, SECONDED BY COUNCILMEMBER TIBBOTT, TO APPROVE THE CONSENT AGENDA. MOTION CARRIED UNANIMOUSLY. The agenda items approved are as follows:

- A. APPROVAL OF DRAFT CITY COUNCIL MEETING MINUTES OF JANUARY 5, 2016**
- B. APPROVAL OF CLAIM CHECKS #217894 THROUGH #218028 DATED JANUARY 7, 2016 FOR \$2,504,306.32. (CHECK #217894 \$165,000.00 WAS VOIDED AND RE-ISSUED AS CHECK #217894 FOR \$165,600.00). APPROVAL OF PAYROLL DIRECT DEPOSIT AND CHECKS #62009 THROUGH #62018 FOR \$496,548.94, BENEFIT CHECKS #62019 THROUGH #62026 AND WIRE PAYMENTS OF \$461,868.55 FOR THE PAY PERIOD DECEMBER 16, 2015 THROUGH DECEMBER 31, 2015**
- C. ACKNOWLEDGE RECEIPT OF A CLAIM FOR DAMAGES FROM STEPHEN MILLET (AMOUNT UNDETERMINED)**

D. NON-REPRESENTED COMPENSATION POLICY LANGUAGE (UPDATED)

4. AUDIENCE COMMENTS

Anne Klein, Edmonds, a resident on Maplewood Drive at the intersection with Sierra Drive explained everyone in their neighborhood has at least a two-car garage and a driveway that can accommodate at least four additional vehicles. She referred to an email she sent to Council last weekend expressing her concern with the large number of vehicles parked on Maplewood Drive and Sierra Drive. She is tired of dealing with this issue, with the years of back and forth with the City though they greatly appreciate the Police Department's recent attempts to monitor the situation. She was angry a neighbor could impact a community as much as this person has. She wants, 1) to open her curtains in the morning and not see 5-7 cars consistently parked along Sierra Drive, 2) to sit on her front deck and not have glare from 5-7 vehicles consistently parked along Sierra Drive, 3) a place for company to park, 4) to leave her driveway and not see 5 vehicles consistently parked along Sierra Drive some so close to the street that people have nowhere to walk including students and people with special needs, 6) to talk with neighbors about something other than the car issue and wonder when the record of 17 vehicles will be broken, 7) to not watch vehicles' positions consistently rotated or moved a few feet to avoid a parking infraction, 8) to not watch repair work being done on vehicles on the public street often with vehicles left running unattended, and 9) to not see vehicles with hoods open, batteries being charged, seats removed and placed on the street, cords running to vehicles, fuels being added or changed, etc. often with the vehicle unattended. She referred to items 8 and 9 as accidents waiting to happen. She summarized she wanted people to keep their stuff on their own property. She relayed this this neighbor's response when asked to move vehicles to the west because she had company, he resented being asked, he paid taxes and could park where wants. She requested the City take action, do something to bring about change and something that can be enforced.

Rich Klein, Edmonds, concurred with wife's comments.

Alan Mearns, Edmonds, a resident on Maplewood Drive were the 5-7 have been cars parked for the past 60 days and probably for the past 2½ years. He submitted a chart of where the cars were parked each day and a description of when the cars are moved. Some are moved every 3-4 days, one has been parked in the same place for 24 days. He also submitted photographs taken every day for the past 60+ days of 4-8 parked cars.

Roger Hertrich, Edmonds, said he was here on the same subject after hearing about it at the Planning Board. He agreed this geographic location has a lot of cars parked on the street, every car had proper license plates, looked like they could be driven, and appeared to be moved occasionally. He did not want that situation to affect the entire City as there are many small properties in the City with barely enough room to park on the lot and where there is no on-street park. The proposed parking regulations propose to reduce the number of cars allowed on a property, forcing cars to be parked on the street. He empathized with the situation the Klein's described and suggested to avoid affecting the entire City, instituting a three hour parking zone and providing parking permits for residents, noting enforcement was the key. He summarized restricting parking on the property forced vehicles off the property. The limit of 2 cars on the street within 1,000 feet may/may not be fair if a property had very limited parking. He remarked it was easy to tell the age of a neighborhood, in older neighborhoods there is a lot of on-street parking.

5. ACTION ITEMS

A. APPOINTMENT OF COMMITTEE REPRESENTATIVES FOR 2016

Council President Johnson relayed each Councilmember had at least two of their choices. A couple committees were not listed on the original form and some adjustments were made to ensure there was a

coordination of skills, ability and interests of Councilmembers as well as their availability. She advised of the following appointments:

Committee	Representative
Affordable Housing Alliance	Councilmember Tibbott
Community Transit	Mayor Earling Alternate: Councilmember Tibbott
Diversity Commission	Councilmembers Fraley-Monillas & Teitzel
Historic Preservation Advisory Commission	Councilmember Teitzel
Lake Ballinger Work Group	Councilmember Nelson Alternate: Councilmember Buckshnis
Lodging Tax Advisory Committee	Councilmember Nelson
PFD Oversight Committee	Councilmember Mesaros
Port of Edmonds	Councilmember Teitzel
SeaShore Transportation Forum	Councilmember Mesaros
SNOCOM	Councilmember Mesaros
Snohomish Health District	Councilmember Fraley-Monillas
Snohomish County Tomorrow	Councilmember Nelson Alternate: Councilmember Tibbott
Salmon Recovery – WRIA-8	Councilmember Buckshnis
Transit Oriented Development (PSRC)	Councilmember Mesaros
Tree Board Liaison	Councilmember Buckshnis

Council President Johnson advised the alternate is welcome to attend meetings but is only required to attend if the main appointee is unable to attend.

Mayor Earling announced his appointments:

Committee	Representative
Disability Board	Councilmembers Fraley-Monillas & Teitzel
Mayor's Climate Protection Committee	Councilmember Buckshnis
Snohomish County Emergency Radio System Governing Board	Councilmember Nelson

COUNCILMEMBER FRALEY-MONILLAS MOVED, SECONDED BY COUNCIL PRESIDENT JOHNSON, TO APPROVE THE APPOINTMENT OF COUNCIL COMMITTEE REPRESENTATIVES FOR 2016. MOTION CARRIED UNANIMOUSLY.

6. STUDY ITEMS

A. SENIOR CONSTRUCTION INSPECTOR, IS MANAGER & ACCOUNTING MANAGER JOB DESCRIPTIONS

Human Resources Manager Mary Ann Hardie advised there are three job descriptions for Council approval; two are new. The first, the Senior Construction Inspector, was approved in the 2016 budget. City Engineer Rob English advised the primary role of the Senior Construction Inspector will be to serve as a construction inspector on utility projects, mainly sewer, water and stormwater replacement projects. He recalled the City had a consultant contract last year for approximately \$300,000; the Senior Construction Inspector position will not address all the City's inspection needs but staff anticipates the consultant cost will be significantly reduced as well as provide that service more effectively. He noted 10% of the position is allocated for overflow development review inspection for projects by private developer but that will depend on project workload.

It was the consensus of the Council to schedule this item on next week's Consent Agenda.

Finance Director Scott James explained the intent of the IS Manager job description is to bring the description current so that it reflects what the person does. For example, it now states working manager; the prior job description stated the manager only directed staff. Other tasks were also added to the position's responsibilities such as development of a strategic plan for IT. He recalled IT challenges in 2014 that Brian Tuley was instrumental in addressing.

For Councilmember Buckshnis, Mr. James explained Mr. Tuley was previously the IS Supervisor, the title was changed to IS Manager. He will still be responsible for supervising staff but he also has other responsibilities. The pay is also upgraded from NR12 to reflect the value he brings to the City.

It was the consensus of the Council to schedule this item on next week's Consent Agenda.

Mr. James explained the Accounting Manager is an upgrade of the Accounting Supervisor position. There are differences in the responsibility, for example, the Accounting Supervisor did not manage professional staff; the Accounting Manager will. The position will also assist with long range projections as well as be responsibility for the CAFR.

Councilmember Buckshnis observed this is not a new position; it elevates a position to a manager. Mr. James explained it elevated the position from NR12 to NR14 and changed the title to match the pay. Councilmember Buckshnis asked if the same person would be taking on more responsibilities. Mr. James answered during the budget process the Council approved the addition of a Staff Accountant; the Accounting Supervisor has elected to take the Staff Accountant position, leaving the Accounting Manager position open.

It was the consensus of the Council to schedule this item on next week's Consent Agenda.

**B. PRESENTATION AND DISCUSSION OF UPDATES TO ECC 17.60 AND 8.48
RELATING TO PARKING IN RESIDENTIAL ZONES (PRIVATE PROPERTY AND
PUBLIC RIGHT-OF-WAY)**

Assistant Police Chief Jim Lawless explained this is an issue the Development Services and the Police Departments have been struggling with for some time. The topic raised during Audience Comment is not the only example of the issue although it is the current issue and probably the most egregious. Some of the inability to do more is attributable to the need for the proposed code changes. The infraction of moving a vehicle to avoid a penalty for a 3-hour parking limit pertains specifically to the 3-hour parking zones downtown and does not apply to residential areas. Most residential areas are covered by a 72 hour parking limit which has been in effect since 1979. There are several issues at play, the individual in the example provided during Audience Comment who may be utilizing his property to work on cars and has what appears to be business in one issue. There is a separate Police Department issue related to parking and the numerous vehicles parked on the street and/or right-of-way.

ACOP Lawless explained this issue began mid last year with conversations between staff and the City Attorney and development of language to address the homeowners' issues and concerns while balancing the concerns and rights of the property owner with the cars. Staff researched ordinances in neighboring jurisdictions related to code issues under Development Services' purview and enforcement issues under the Police Department's purview. The proposal includes two ordinances which were reviewed by the Planning Board and a public hearing held on the Development Services-related ordinance.

Development Services Director Shane Hope referred to the proposed ordinance related to the zoning code issue about parking on single family residential properties. The existing code states up to five vehicles can

be parked on a residential property, not including those that are screened and in a backyard. That regulation is not clear whether the vehicles in the garage are included in that number but it appears the five does include the vehicles in the garage. Instead of a limit of five vehicles on the property, not including the backyard, the proposed code addresses what is in front yard visible to public, and limits that to four. There can be additional cars in the back or side yard as the code already allows. The proposed code would keep the front yard from looking like a parking lot. This does not address additional cars parked on the street which is a Police Department matter.

Ms. Hope explained another proposed change is to require vehicles in the front yard be parked on an improved surface, not just dirt or grass. The zoning code also addresses auto repair in residential zones; auto repair as a business is not allowed in residential zones unless they are able to obtain a business license as a home occupation. However, people living in residential zones are allowed to work on their cars as long as it is not business. The City investigates activities that look like a business or that neighbors indicate is a business. If it is found to be a business, code enforcement ensues. There are cases when staff cannot tell whether it is a business and in those cases it is difficult to do anything. The City can limit the hours that auto repair works take place, where parts can be stored (in enclosed building) and if there is evidence that it is business, address it via enforcement.

Councilmember Nelson asked how the up to two vehicles registered to a dwelling unit parked in the street was developed. ACOP Lawless clarified there are two ordinances, one is related to zoning and the ordinance he is proposing is related to ECC 8.50 and parking. The ordinance proposed by Ms. Hope requires a public hearing, the ordinance he is proposing does not. With regard to how the two vehicles registered to a dwelling unit was determined, he explained that was via the City Attorney's research of surrounding jurisdictions and what has withstood judicial scrutiny. He reiterated the goal of balancing the neighborhood and property owners and not being too limiting. The code allows up to 4 vehicles in the front yard, additional vehicles in the backyard and garage and 2 within 1,000 feet. Councilmember Nelson relayed his understanding there are other neighboring cities have that provision. ACOP Lawless agreed.

Councilmember Mesaros questioned when a hobby becomes a business. He provided a hypothetical, a car fanatic likes to buy older cars, work on them and then sell them which may take the person 3-4 months to accomplish. During those 3-4 months the person buys another car even though the first one is not finished. It is a hobby but the person makes a little money. Ms. Hope agreed there was some gray area where it was difficult to demonstrate whether something is a hobby that the person is not making money from or a commercial occupation. When staff suspects it may be a commercial operation, they check with the state which has strict regulations related to vehicle sales.

Councilmember Mesaros clarified the person may not be doing it as a commercial occupation; in the course of a year they may buy and sell six cars. Ms. Hope agreed there was a fine line, staff does not try to understand every private transaction but if there appears to be a pattern, staff checks with the state.

Councilmember Fraley-Monillas assumed hobby or not, if a person is selling cars, it is a business. Ms. Hope pointed out a lot of residents sell a car. Councilmember Fraley-Monillas commented selling multiple cars would appear to be a business. Ms. Hope questioned how the City enforced that. The intent was to identify things the City can enforce with existing resources and to define them clearly enough to allow enforcement and at the same time not be overly invasive on property owners' activities. Councilmember Fraley-Monillas commented even a hobbyist would need be licensed with the state as well as the City. Ms. Hope agreed, if the person was selling over the amount the state allows without a dealer's license.

Councilmember Teitzel referred to the statement in the agenda memo, "The proposed code amendment would restrict the amount of impervious surface for outdoor parking in the front yards of single-family

lots. It would do so by not allowing impervious parking surfaces to take up more than 50% of the front yard.” He recalled when speaking with Ms. Hope regarding the Critical Area Ordinance, it was his understanding compacted gravel and compacted earth were considered impervious. He asked if this language suggested a homeowner could make 50% of their yard impervious by driving on it until the earth was compacted. Ms. Hope said in this code impervious surface is defined as hard permanent pavement such as pavers, concrete, asphalt, etc. not gravel or compacted dirt. Councilmember Teitzel asked whether the definition of impervious should be consistent. Ms. Hope answered it may not be appropriate to have the definition for things that occur in an environmentally sensitive area apply to every property in the City. That is why this definition is only in the residential parking chapter.

Councilmember Tibbott commented the description of a hobbyist describes his own sons for a short season of their teenage years; under state law they were allow to sell up to 4 cars. In their case, it was a short-lived, but fun hobby.

Regarding on-street parking, Councilmember Teitzel said several citizens had expressed their concern to him regarding Maplewood Drive. In some cases citizens move their cars 3-4 feet every third day to avoid getting ticketed. He suggested the following addition to Section 1.B of the ordinance restricting cars on right-of-way: “Up to two vehicles registered to a dwelling unit may be parked within one thousand (1,000) feet of the dwelling unit on the public right-of-way for a period of up to 72 hours. In no case may more than two cars registered to a dwelling unit park on the public right-of-way within one thousand feet of the dwelling unit, even if the vehicle does not remain parked in precisely the same spot. ACOP Lawless said the proposed language is intended to address that even if vehicles are moved. Moving vehicles to avoid violation is specifically related to the 3-hour time limits in the downtown area.

Councilmember Buckshnis referred to enforcement, recalling one car had not been moved in 24 days. In Portland if a vehicle is not moved in 30 days, it can be towed. She asked whether Edmonds had a similar law that allowed a vehicle to be towed if it was not moved within a period of time. ACOP Lawless answered the time period for abandoned vehicles is 72 hours which is contained in Section A. The new language in Section B is related to 1,000 feet of the dwelling unit. He assured the enforcement officers are very frustrated with this and other situations because every attempt to document the location of the vehicle has been overcome, numerous citations have been issued, but the majority have been dismissed in court. One of the issues in this area is there are no curbs or sidewalk; some vehicles are parked on the street around the corner from his home and some are parked on the easement adjacent to the shoulder which forces pedestrians into the roadway. There is currently nothing that precludes the resident from parking vehicles on the easement; the proposal is to address that via revisions to Chapter 17.

Mayor Earling advised a public hearing is scheduled next week. He encouraged Councilmembers to contact staff with questions prior to the hearing. ACOP Lawless clarified the ordinance proposed by Ms. Hope requires a public hearing; the ordinance he proposed does not. It was the Council’s preference to forward both ordinances as a package.

C. SUMMARY OF 2015 CG AND CG2 DEVELOPMENT IN THE HIGHWAY 99 AREA

Development Services Director Shane Hope reported on Ordinance 3981, adopted by Council in late 2014 related to the CG (General Commercial) zones:

- Removed requirement for 2 stories of commercial before any residential could be added to development in CG/CG2 district’s “Hwy 99 Corridor” or “High Rise Node” designation
- Standardized the approach to commercial parking requirements in CG/CG2 district
 - 1:400 square feet
- Added requirement for Development Services Director to provide report by 2/1/16 on 2015 development activities for CG and CG2 districts in Hwy 99 area

Ms. Hope identified 2015 permitted projects in CG and CG2 district for Hwy 99 area, advising none of the projects were affected by the zoning code changes made in 2014:

- 60 unit assisted living facility
 - 21006 72nd Ave W
- 3 sets of 4 unit townhomes
 - 7232-7236 212th SW
- Single story shell retail building (6,162 sq.ft.)
 - 21940 Hwy 99 (Winco parking lot)

Ms. Hope displayed a map of the Hwy 99 corridor, identifying:

- CG and CG2 zones
- High Rise Node within CG and CG2 zones and other zones on the Hwy 99 corridor
- Location of the three projects above

Ms. Hope advised staff will continue to report to the Council as part of the Hwy 99 subarea planning process and zoning audit.

Councilmember Tibbott asked the height limit in the High Rise Node. Ms. Hope responded it is basically unlimited but there are stepback requirements based on proximity to single family. She offered to provide him more information. Councilmember Tibbott asked whether this was the intended result of the code change. Ms. Hope said it was hoped more development would occur but one year is a not a lot of time.

Councilmember Fraley-Monillas commented property on Hwy 99 was recently listed for sale and there is some hope that that property will generate a different type of building than what currently exists. It likely would not have been listed for sale if the zoning had not been changed. Ms. Hope agreed it took some time for property owners to learn of the change; the change in zoning could lead to redevelopment.

Council President Johnson requested the map be included in the packet in the future.

Councilmember Teitzel asked what more the Council could do with regard to zoning changes to stimulate development on Hwy 99. Ms. Hope was hesitant to say until further study is done. The zoning audit will be helpful and she anticipated further discussion in the coming year.

No action was required, update only.

D. AUTHORIZATION FOR MAYOR TO SIGN 2015-2017 COORDINATED PREVENTION GRANT AGREEMENT WITH DEPARTMENT OF ECOLOGY

Public Works Director Phil Williams reported renewal of the Coordinated Prevention Grant between the City and the Department of Ecology occurs every two years. The purpose is to stimulate and build capacity in local jurisdictions to carry out the state's policies, directives and wishes related to recycling, waste education, etc. City employee Steve Fisher has been in this role for 16 years and the City has received grant support to help fund that position the entire time. The agreement refers to funding for 2015, 2016 and 2017 due to the state's fiscal years versus the City's calendar years. On an annual basis the state provides approximately \$21,000 which the City matches with approximately \$8,000 from the General Fund to support recycling and waste reduction activities. The City has an Interlocal Agreement with Lynnwood and Lynnwood provides a similar amount of funding for the position. Together, the grant funds cover approximately \$56,000 of the cost of this position and its benefits. The remainder, approximately \$20,000 is paid by the Water Utility as Mr. Fisher also works on water use and conservation and other general environmental issues.

It was the consensus of the Council to schedule this item on next week's Consent Agenda.

E. PRESENTATION OF A PROFESSIONAL SERVICES AGREEMENT WITH LOUIS BERGER GROUP FOR DESIGN OF THE DAYTON STREET STORMWATER PUMP STATION

City Engineer Rob English explained in August 2013 the City completed the initial alternatives study for the SR104 Dayton Street which looked at ways to solve the stormwater problem at that intersection. Two of the items from that study, 1) installing a pump station at the Beach Place parking lot on Dayton Street and 2) making adjustments to the storm system on Dayton to collect runoff from Harbor Square and Salish Crossing, were included in a predesign study in 2015. The predesign study identified a \$1.6 million cost to install a pump station at the Beach Place parking lot. That project is now moving into final design and permitting. Louis Berger is the recommended consultant; they did the predesign work as SAIC which was bought out by Louis Berger. The scope of work includes final design, permitting, hydrologic modeling of the pump station including geotechnical investigation and reporting. The total fee is \$290,000 plus a management reserve of \$30,000 for total contract value of \$320,000. The 2016 budget included \$302,000 for the project; design will carry over into 2017 so staff feels there is enough funding to move forward with project. He recommended scheduling approval on next week's Consent Agenda as some small tweaks need to be made to the final scope of work.

Councilmember Nelson asked the real word impact of the pump. Mr. English answered that was a complex question because the whole system, the marsh, Dayton Street, tide, elevation of the tide, etc. is tied together. The pump station is one component; other components include daylighting the creek and providing more storage in the marsh by excavating more defined channels, improvements to the culverts under SR104 to direct runoff into the excavated channels, and new tide gates on Dayton Street and the Willow Creek outfall. The pump station's capacity of 9 cfs (approximately 4,000 gallons/minute) will provide a significant improvement. Councilmember Nelson asked whether the pump station needed to work in conjunction with all the other changes. Mr. English answered yes, but the pump station will provide a significant improvement; greatly reducing the ponding during significant events.

Council President Johnson asked whether the storm drains under SR104 and the sedimentation in the marsh would be part of this study. Mr. English answered those are not part of this work but part of the Edmonds Marsh project that will also be pursued in 2016. The marsh projects looks at excavating the channels through the marsh independent of daylighting Willow Creek; due to ongoing cleanup at the Unocal site, it will be a few years before that is completed. Replacing the SR104 culverts will require coordination with WSDOT; the timing and cost have yet to be determined. Permitting to excavate the channels will also take time. Council President Johnson observed some of the flooding at Dayton is due to the circumnavigation of water because the marsh and culverts are full. She recognized those were related and she was glad they would be addressed.

Council President Johnson asked what this project was expected to accomplish at Harbor Square. Mr. English explained Harbor Square's drainage system currently outfalls into the marsh. During high tide events, the water is unable to escape marsh which backs up into the Harbor Square stormwater system, creating ponding within the development. One of the components of this design work is to tie Harbor Square and the south area of the Salish Crossing development into the Dayton Street storm system so during peak events with high tides water will overflow into the Dayton Street system and be pumped out with this pumps

Council President Johnson asked the location of the Beach Place parking lot. Mr. English answered it is also known as the fishing pier parking lot that is shared by the City and the Port just west of Railroad Avenue on the north side of Dayton.

Councilmember Mesaros asked how long the project will take. Mr. English anticipated a year of design work with the goal of advertising the project in 2017. Funding for the project is programmed in the CIP but design work will provide a better idea of the cost. Councilmember Mesaros commented this project would have been useful tonight.

Councilmember Buckshnis commented this was a great start to addressing the water in that location. When the channels are excavated in the marsh, it will act like a sponge which will help. She asked where the water that ponds in Harbor Square and Salish Crossing would be pumped to. Mr. English explained Harbor Square currently drains to the marsh. During high tide or high rainfall events, that water backs up into the marsh and Harbor Square cannot drain. This design work will design a new stormwater connection from Harbor Square and the south of the Salish Crossing development that would tie into the Dayton Street stormwater system and provide overflow for peak events that would drain to the Dayton system and be removed by the proposed lift station.

Councilmember Teitzel observed when Willow Creek is daylighted king tides will cause backup into the creek and into the marsh. He asked whether that was a consideration or would the new tide gate address that. Mr. English answered the new tide gate will help address that. The daylighting of Willow Creek will allow the marsh to drain quicker and provide more storage within the marsh. The system improvement such as the pump station at Dayton and additional storage within the marsh will also help reduce flooding caused by higher tides elevation. Councilmember Teitzel asked whether the new pump will contemplate sea level rise which scientists say will be up to 2 feet over the next 100 years. Mr. English responded there is a lot of study occurring to estimate sea level rise. That issue will be determined in the design phase, taking into consideration the life of the pump station, etc.

Council President Johnson announced a King Tide Viewing Party on Thursday, January 14 from 8:00 – 8:30 a.m. at Brackett’s Landing. The intent is to provide a better understanding of sea level rise. The party is sponsored by the UW National Sea Grant College which is coordinated by NOAA and US Department of Commerce. Attendees are encouraged to bring cameras to facilitate a photographic log of the impacts. Citizens are invited to photograph their favorite park, beach or wetland in the Puget Sound region during this month to document extreme tides and upload their photos to the King Tide project at www.washingtonkingtides.net. This project aims to promote awareness of impact of sea level rise to better visualize coastal areas vulnerable to rising tidal waters.

It was the consensus of the Council to schedule this item on next week’s Consent Agenda.

F. AUTHORIZATION FOR MAYOR TO SIGN THE SECOND AMENDMENT TO THE INTERLOCAL AGREEMENT WITH THE LAKE BALLINGER/MCALEER CREEK WATERSHED FORUM

City Engineer Rob English explained the City has participated in this forum since 2008; there are currently two other members, Mountlake Terrace and Lake Forest Park. He highlighted actions that have occurred as a result of the forum:

- Via working with member agencies, replaced culverts at Nile Golf Course
 - Helped with dropping lake levels more quickly after rain events
- Installed and operate a web-based lake level monitor
- Via a lobbyist, changed requirements for securing federal funding for projects such as Lake Ballinger and flood control improvements.

This second amendment will continue the forum for another year. There has been some discussion about Snohomish County joining the group. The annual cost is \$1600 for administrative support and \$12,000 to

fund Edmonds' share of the lobbyist, approximately \$14,000 total in 2016. The 2016 budget includes \$45,000.

Councilmember Buckshnis said she was on the forum last year and thoroughly enjoyed it. This year the forum will attempt to get Snohomish County and Shoreline to join.

It was the consensus of the Council to schedule this item on next week's Consent Agenda.

G. AUTHORIZATION FOR MAYOR TO SIGN A SEWER EASEMENT FOR AN EXISTING SEWER MAIN

City Engineer Rob English explained this sewer, located on the United Methodist Church property at 828 Caspers Street, was built in 1959. During plan review for the new development located at 9th & Caspers, there was a need to secure a documented easement for the pipeline and staff asked the developer and United Methodist to secure the easement. The Church secured an easement in 2015 before they included the City so it was necessary to relinquish that easement and put it in a form approved by the City Attorney. He pointed out one correction in Exhibit B, 7th Avenue should be 9th Avenue.

It was the consensus of the Council to schedule this item on next week's Consent Agenda.

H. AUTHORIZATION FOR MAYOR TO SIGN A PROFESSIONAL SERVICES AGREEMENT WITH BHC CONSULTANTS FOR THE LAKE BALLINGER SEWER TRUNK MAIN STUDY

City Engineer Rob English explained the 2013 Sewer Comprehensive Plan identified areas with maintenance concerns or capacity issues. He displayed a map identifying two sewer mains that were identified as having both maintenance concerns and capacity issues. The mains are adjacent to Lake Ballinger. The west trunk sewer main runs along the west side of Lake Ballinger collects sewer flow from several agencies including Edmonds, Olympic View Water & Sewer District, Mountlake Terrace and during high flow from Lynnwood. The southern trunk main comes in from Mountlake Terrace along the south side of Lake Ballinger and collects a small portion of Edmonds' flow as well as flows from Mountlake Terrace. He described the two phases of the scope of work:

- 1) Identify existing flows in the system where they come from (basin analysis) and future flows.
 - Edmonds currently owns and maintains the mains but will partner with each agency in designing a solution and fixing the problem.
 - Estimated cost \$165,000
- 2) Predesign process to identify solutions/alternatives to address capacity and maintenance issues in both sewer mains
 - Estimated cost \$135,000

Staff is in the process of finalizing the scope of work. He left it to the Council's discretion to give authorization for the Mayor to sign the contract or scheduled approval on the Consent Agenda.

Council President Johnson requested the map be included in the Council packet for the next decision. She preferred to schedule approval on the Consent Agenda as the scope of work had not been finalized. Mr. English agreed.

For Councilmember Mesaros, Mr. English advised the south main continued east into Mountlake Terrace.

It was the consensus of the Council to schedule this item on next week's Consent Agenda.

I. AUTHORIZATION FOR MAYOR TO SIGN AND ACCEPT RIGHT OF WAY DOCUMENTS FROM EDMONDS SCHOOL DISTRICT FOR THE MADRONNA WALKWAY PROJECT

City Engineer Rob English advised the project, funded by the Safe Routes to Schools grant program, will provide a walkway along 236th Street, connecting SR104 to Madrona Elementary. During the design process it was discovered two easements were needed:

- 1) Utility Easement
 - During the design process it was discovered the underlying fee title for at least half the street width on 236th near the school is owned by Edmonds School District (ESD) and the property owners on the other side. A utility easement for a detention pipe will be donated by ESD.
- 2) Temporary construction easement
 - Required to connect the sidewalk from 236th into the school building
 - Grant program provided the additional funding
 - Once the project completed, ownership and maintenance of sidewalk will revert to ESD

The right-of-way documents are being presented to the School District Board tonight.

It was the consensus of the Council to schedule this item for approval on next week's Consent Agenda.

J. AUTHORIZATION FOR MAYOR TO SIGN THE TIB FUEL TAX GRANT DISTRIBUTION AGREEMENT FOR THE 238TH ST. SW WALKWAY FROM HIGHWAY 99 TO SR-104

City Engineer Rob English advised the City secured a TIB grant for the walkway on 238th between Hwy 99 to SR 104. This project was added to the 2015 Transportation Plan update, staff applied for the grant in late 2015 and it was awarded in November. TIB requires approval of a grant agreement. The project will construct approximately 1,000 feet of new sidewalk to fill gaps and provide a continuous sidewalk from Hwy 99 to SR104, replace pedestrian curb ramps and install a mid-block pedestrian crossing which will assist with access to Community Transit bus stops. Project design will begin this year construction is anticipated in 2017. The grant award is \$372,300 and the local match is \$119,000 for a total project cost of \$491,300.

Council President Johnson commented this project was a result of the SR104 study and the Transportation Plan update. She was delighted the City received funding so quickly, noting it was an important project for the region.

Councilmember Tibbott was delighted with this project, commenting it connects existing walkways to provide a continuous walkway from Edmonds Way to Highway 99. He supported identifying more projects like this.

It was the consensus of the Council to schedule this item on next week's Consent Agenda.

K. CITY ATTORNEY ANNUAL REPORT

City Attorney Jeff Taraday explained the objective of this report was to provide an update on what the City Attorney is doing but also to give the City Council and the public some perspective on the City Attorney's role in Edmonds. He described the big picture, the City has four attorney relationships: Lighthouse Law Group, WCIA, bond counsel and Zachor & Thomas (prosecution). He described who the client is:

- Rules of Professional Conduct

- (RPC) 1.13(a) A lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents
- Attorney – client relationship:
Attorney ↔ Organizational Client ↔ Duly Authorized Constituents

He explained Duly Authorized Constituents include anyone with an official role for the City including:

- City Council
 - Individual Councilmember
 - Boards and commissions
- Mayor
 - Directors and staff
- Judge

He clarified he can speak in a manner that is protected by the attorney-client privilege with any duly authorized constituents but they are not technically his clients. He described his role with the Council's constituents, the citizens, explaining although citizens are the Council's constituents, they are not duly authorized to act on behalf of the City and therefore he does not have an attorney-client relationship with citizens. The same concept applies to all the attorney relationships. Unless specifically appointed to represent a Councilmember as an individual, they are not represented as an individual but as a duly authorized constituent of the City. There may be rare instances when conflict counsel is appointed when for example the interests of an officer of the City may be at odds with the City.

Mr. Taraday provided information on the following:

- City Attorney's duty to investigate:
 - RPC 2.1, comment 5: A lawyer ordinarily has no duty to initiate investigation of a client's affairs or to give advice that the client has indicated is unwanted, but a lawyer may initiate advice to a client when doing so appears to be in the client's interest
- Request to investigate:
 - The RPCs do contemplate that lawyers will be asked on occasion to investigate alleged violation of law
- What if lawyer knows of a violation?
 - RPC 1.13(b): If a lawyer for an organization knows that an officer, employee or other person associated with the organization is engaged in action, intends to act or refuses to act in a matter ... that is a violation of a legal obligation to the organization, or a violation of law that reasonably might be imputed to the organization, and that is likely to result in substantial injury to the organization, then the lawyer shall proceed as is reasonably necessary in the best interest of the organization. ...
- Reporting up
 - RPC 1.13(b): ... Unless the lawyer reasonably believes that it is not necessary in the best interest of the organization to do so, the lawyer shall refer the matter to higher authority in the organization, including, if warranted by the circumstances, to the highest authority that can act on behalf of the organization as determined by applicable law.
- What if reporting up doesn't work?
 - RPC 1.13(c) Except as provided in paragraph (d), if (1) despite the lawyer's efforts ... the highest authority ... insists upon or fails to address in a timely and appropriate manner an action, or a refusal to act, that is clearly a violation of law, and (2) the lawyer reasonably believes that the violation is reasonably certain to result in substantial injury to the organization. then the lawyer may reveal information relating to the representation whether or

not Rule 1.6 permits such disclosure, but only if and to the extent the lawyer reasonably believes necessary to prevent substantial injury to the organization.

- Lawyer as a decision maker?
 - RPC 1.13, comment 3: When constituents of the organization make decisions for it, the decisions ordinarily must be accepted by the lawyer even if their utility or prudence is doubtful. Decisions concerning policy and operations, including ones entailing serious risk, are not as such in the lawyer's province.
- Lawyer not decision-maker, but...
 - ... when the lawyer knows that the organization is likely to be substantially injured by action of an officer or other constituent that violates a legal obligation to the organization or is in violation of law that might be imputed to the organization, the lawyer must proceed as is reasonably necessary in the best interest of the organization.
- Same rules for government lawyer or city attorney?
 - RPC 1.13, comment 9: ... in a matter involving the conduct of government officials, a government lawyer may have authority under applicable law to question such conduct more extensively than that of a lawyer for a private organization in similar circumstances. Thus, when the client is a governmental organization, a different balance may be appropriate between maintaining confidentiality and assuring that the wrongful act is prevented or rectified, for public business is involved.
- If you aren't the client, are your communications still confidential?
 - RPC 1.13, comment 2: When one of the constituents of an organizational client communicates with the organization's lawyer in that person's organizational capacity, the communication is protected by Rule 1.6. ... This does not mean, however, that constituents of an organizational client are the clients of the lawyer. The lawyer may not disclose to such constituents information relating to the representation except for disclosures explicitly or impliedly authorized by the organizational client in order to carry out the representation or as otherwise permitted by Rule 1.6.

Councilmember Teitzel asked what is meant by impliedly authorized. Mr. Taraday provided an example: when he is asked in a City Council meeting to provide legal advice, that advice in ordinary circumstance would be confidential, but because he is being asked in a City Council meeting, the Council is impliedly authorizing him to disclose the answer by asking it in a public meeting. He continued providing the following information:

- Advisor
 - In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors, that may be relevant to the client's situation.
- City Attorney Team:
 - Jeff Taraday
 - City Council meetings
 - Elected official advice
 - Land use
 - Litigation
 - Coordination/miscellaneous
 - Office hours twice a week
 - Sharon Cates
 - Labor and employment
 - Contracts and ILAs

- Bidding and procurement
- Litigation
- Office hours once a week
- Patricia Taraday
 - Public Records Act
 - Code enforcement
 - Litigation
 - Office hours once a week
- Beth Ford
 - Research
 - Writing
 - Litigation

Mr. Taraday provided City Attorney Team Stats January 1, 2015 – December 31, 2015

- 3,258.7 hour worked
- \$492,000 in legal fees
- \$151 average effective hourly rate

He identified the top 10 matters in 2015 (by hours worked):

10.	Mayor's Office	115 hours
9.	Parks, Rec. & Culture	119 hours
8.	CS & Econ. Dev.	121 hours
7.	City Clerk	223 hours
6.	Wall v. Edmonds	235 hours
5.	Finance & Admin. Services	273 hours
4.	Police	309 hours
3.	Development Services	374 hours
2.	Human Resources	403 hours
1.	City Council	530 hours

He identified the top litigation matters in 2015:

5.	John S. Ryan (trustee sale)	10 hours
4.	Three Graces (condemnation)	29 hours
3.	RJ Willy (condemnation)	29 hours
2.	Bernstein (Decl./Inj. Relief)	39 hours
1.	Wall (LUPA)	235 hours

Other pending litigation with Lighthouse includes:

- Blomenkamp (LUPA)
- Green Tree Servicing (foreclosure)
- US Bank v. Yamasaki (foreclosure)
- Ronald Wastewater (appeal of BRB)

Litigation completed by Lighthouse in 2015:

- Edmonds Pine Street LLC (LUPA)
 - Stipulation and Order of Dismissal
- Nationstar Mortgage (lien)
 - Stipulated Order of Dismissal after city's lien paid off
- Tupper v. Edmonds (public records act)
 - Settled for \$50,269.25
- Tupper v. Edmonds (writ of mandamus re compensation commission)

- Dismissed by court for want of prosecution

WCIA legal matters that are not included in the above include:

- Claims arising from alleged:
 - Employment related action e.g. retaliation and harassment
 - Police excessive force
 - Land use damage
 - Auto liability
 - Defective street or sidewalk
 - Sewer obstruction
 - Premises liability ‘
 - Other negligence

He invited Councilmembers to call him with questions about cases being handled by WCIA and he will direct them to the appropriate attorney or get an answer.

Council President Johnson requested an electronic copy of his presentation.

Councilmember Buckshnis expressed appreciation for the work Lighthouse has done, noting some newer Councilmembers may not realize how many cases had been hanging around for years before Lighthouse was hired.

7. MAYOR'S COMMENTS

Mayor Earling encouraged Councilmembers to attend the January 21 Snohomish County Cities meeting at the Mill Creek Country Club where elections will be held. He reminded Councilmembers to meet with staff regarding amendments to the Critical Areas Ordinance.

Mayor Earling reported negotiations with Fire District 1 and the union are going to arbitration. It will be another 12-18 months before the member the City learn the amount of the increase for 2016.

He announced the State of the City address will be at 8:30 a.m. on Thursday February 11 at the Edmonds Theater. Snohomish County Executive Somers reappointment him to Sound Transit Board which the Snohomish County Council confirmed yesterday.

8. COUNCIL COMMENTS

Councilmember Teitzel reported he was impressed with the Diversity Commission's passion and said they represent a great cross section of the community. They are working on their 2016 work plan which will be presented to the City Council on January 26.

Councilmember Teitzel reported the well-attended January 11 Port of Edmonds meeting included a presentation by Salish Sea Expeditions who currently lease a sailing vessel and plan to lease an 80-foot power vessel soon. Their focus is encouraging youth participation to learn about marine sciences and generate interest in marine careers. The Port meeting also included discussion about the Waterfront Festival which is sponsored by the Noon Rotary Club and is one of their largest fundraising opportunities, generating funds for scholarships and Trinity Place which provides housing for transitional moms. The Port's concerns with the Waterfront Festival include parking conflicts for Port tenants and the inability to use the dry storage boat launcher during that weekend because congestion makes it unsafe. The Port wants more waterfront activities such as the antique wooden boats. The Port also asked the City to consider restricting parking at Marina Beach Park that weekend to only marina tenants. The Port also

expressed concern with amendments adopted in late December to the Critical Area Ordinance and will provide a letter outlining their concerns by January 19.

Councilmember Fraley-Monillas said she was impressed with Councilmember Teitzel jumping in feet first. She reported at the Health District meeting Snohomish County Councilmember Brian Sullivan was elected chair and she was elected vice chair. She expressed condolences to Dick Spady's family, the founder of Dick's Drive-In. She had the privilege of meeting him at the opening of Dick's Drive-In in Edmonds, the first new drive-in opened in 30 years. She reminded Monday is Martin Luther King Day and encouraged the public to give time to the community which is what Reverend King would want.

Councilmember Nelson thanked Mayor Earling and Council President Johnson for the committee appointments. He looked forward to representing the City and the Council to the best of his ability.

Council President Johnson commented the citizens got a treat when Dick Spady built the Dick's Drive-In in Edmonds. According to a story in My Edmonds News, the Edmonds location was selected after 115,000 people voted in an online poll. The Edmonds location was the first new Dick's Drive-In in nearly four decades, a great landmark for the City.

Council President Johnson relayed the Diversity Commission's suggestion to attend the presentation by Dr. Michael Eric Dyson at Edmonds Community College on January 14; join Global Peace Foundation USA for a day of service or the United Way of Snohomish County Day of Service for Teens.

9. **CONVENE IN EXECUTIVE SESSION REGARDING PENDING OR POTENTIAL LITIGATION PER RCW 42.30.110(1)(i)**

This item was not needed.

10. **RECONVENE IN OPEN SESSION. POTENTIAL ACTION AS A RESULT OF MEETING IN EXECUTIVE SESSION**

This item was not needed.

11. **ADJOURN**

With no further business, the Council meeting was adjourned at 9:08 p.m.